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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,643	04/10/2001	Isaiah Moore JR.	IM-1	7659

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Michael I. Kroll
171 Stillwell Lane
Syosset, NY 11791

EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/829,643

Applicant(s)

MOORE, ISAIAH

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (3,099,450) in view of Franklin (Instructional Booklet for Major League Pitching Trainer) and DeLanzo (5,118,104).

Regarding claim 24 and 25, Randall shows a baseball batting practice apparatus and method of use, comprising: selecting a resilient (see column 1, lines 20-25) spherical ball (A) from which a segment (B) has been removed to leave the ball comprised of an exterior spherical portion (1) and a flat area (2), the removed segment being sized such that a perpendicular line from the center of the flat area to the opposite side of the remaining spherical portion is equal to or between forty-five and fifty-five percent (see column 1, lines 36-40 and lines 63-66) of the original spherical ball diameter; Randall further shows the bat (stick) has a diameter not over one inches (see column 2, lines 23-26). Randall provides instructions for illustrating (Note: the broadest reasonable interpretation of “*to illustrate*” would include *to clarify, as by use of examples or comparisons or steps*) at least one of grips, arm movement and release methods for pitching a baseball (see column 1, lines 44-50). Additionally, Randall provides the steps for enabling the first player, in the instant case the pitcher to grip, throw and release the half-ball in a manner demonstrated by the steps or instructions in order to carryout one of several chosen

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pitches (see column 1, lines 51-62; and column 2, lines 23-26); and further providing the steps for enabling a second player, in the instant case the batter to swing a bat having a diameter smaller than a regulation baseball bat (see column 2, lines 23-26) at the ball, wherein such steps enable the batter to attempt to identify standard pitches associated with arm movements, and improve the batter's batting skills. The aforementioned result or step is a well known practice in Baseball. In the event applicant disagrees, DeLanzo under the Description Of The Related Art (column 1, lines 12-20) discloses this well known practice. With regards to the use of an instructional table, Randall gives a few representative examples for carrying out different pitches using the modified ball. Randall in his Patent shows these steps in text-form and not in tables, charts and graphs. However, it is well known that for marketing purposes, often times instructions are illustrated in the form of tables and figures to demonstrate the method of use or assembly for the end user. Franklin also shows the above feature. In view of Franklin it would have been obvious to have provided an instructional booklet having tables and figures for the training apparatus of Randall, the motivation being, so the end user can more readily carryout the instructions necessary for using the apparatus of Randall to more readily cause the projectile to sail or glide through the air. Regarding "releasing a ball in an exaggerated manner", the "exaggerated manner" is merely a human action. There is no standard criterion to determine an "exaggerated manner". The newly added limitation in claim 24 is a well known step that is commonly achieved when using a reduced size ball and/or bat, there being nothing new or unobvious in achieving this result.

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3. Claims 26-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art of record as applied to claim 25 and further in view of "The Visual Dictionary of Baseball (TVDB)".

Regarding claims 26-33, Randall does not disclose expressly each and every arm movement known in baseball and softball. Randall gives a few representative examples for gripping, throwing and releasing the half-ball. e.g. the ball can be held so that the flat side is tilted at a slight angle to the right, left, up or down, thus producing variations from normal flight, by doing so a number of varieties of pitching techniques can be developed. Randall defines the steps required for gripping, throwing and releasing the half-ball, one familiar with baseball would be able to determine the type of pitch. Additionally, Randall teaches that a whip-like sidearm pitch can be employed, so that the projectile, when released, is given a spinning motion about its own axis, with the lower flat surface generally parallel with the ground (see column 1, lines 44-62). Perhaps, since the steps (arm positioning/movements) are so well known and conventional, the patentee (Randall) may have thought that no additional comments were required for the remaining known pitches. In the event applicant disagrees that the pitches are old and well known, TVDB demonstrates several well-known pitches e.g. fastball, curveball, knuckleball, slider, sinkerball, etc. (see pages 26 and 27). Therefore, in view of Randall's own teaching and TVDB it would have been obvious to carryout a pitch in any well-known manner, the motivation being, to achieve the desired pitch and to make the game of Randall more interesting and educational for the end user. It should be noted that during normal use and operation of the Randall device, the method steps set forth by applicant in the claim is inherently provided.

Regarding claim 34, Randall shows an apparatus and method of playing a baseball type game, the game including a rubber spherical ball which has a segment removed (see column 1, lines 20-25), wherein the remaining spherical portion is equal to or between forty-five and fifty-five percent of the original spherical ball diameter (see figures 2-5). Randall further shows using a bat (stick) having a substantially constant diameter, advantageously not over one inch in diameter (see column 2, lines 23-26) and a length from two to three feet (24-36 inches) and wherein the game is played according to the rules of baseball (note the rejection of claims 24 and 25 above). Randall does not disclose expressly the bat length being 38 to 40 inches. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide a bat length of 38-40 inches, because Applicant has not disclosed that providing a 38-40 inch bat, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the 24-36" bat taught by Randall or the claimed 38-40" bat because both bats perform the same function of impacting a projectile. Therefore, it would have been an obvious matter of design choice to modify Randall to obtain the invention as specified in claim 34. It is noted that to establish unexpected results over a claimed range, applicant should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. In re Hill, 284 F.2d 955, 128 USPQ 197 (CCPA 1960). The application as filed does not disclose criticality over the claimed range.

Response to Arguments

4. Applicant's arguments filed 14 December 2006 have been fully considered but they are not persuasive. Applicant further argues that the prior art of record does not teach the claimed

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limitations. The Randall patent clearly teaches the claimed structure i.e. stick and half ball and further teaches that a variety of different pitches can be developed by using the inventive ball. The Franklin (NPL) also teaches the various types of pitches which can be achieved. Delanzo teaches that it is well recognized in baseball that the batter should watch the ball in order to properly strike the pitched ball. Therefore, contrary to applicant's assertions the prior art of record does teach the claimed method steps.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 10:00 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MA
07 February 2007



MITRA ARYANPOUR
PRIMARY EXAMINER